

## **REMARKS**

According to the Examiner, the response filed on March 2, 2005 is not fully responsive to the prior office action, allegedly, because newly added claims 54-78 are directed to an invention that is independent or distinct from the invention originally claimed. Applicants respectfully disagree.

Upon filing of the present application on November 27, 2000, a Preliminary Amendment was filed, amending certain claims. One such claim, claim 25, was amended for reasons of clarity to recite "a method of preventing or treating infections of functional and cosmetic tissue remodeling and repair, of the human or animal upper respiratory tract or ear, by applying to said tract or ear, a pharmaceutical preparation, comprising at least one anti-inflammatory, antiseptic agent or wound-healing promoting agent, said at least one agent being combined with a particulate carrier in the preparation." Dependent claims were directed to liposomal formulations and iodine and iodine complexes, such as povidone iodine.

On March 4, 2002, the U.S. Patent and Trademark Office mailed an Office Action, in which the Examiner examined amended claim 25. The Examiner did not require restriction of any of the claims.

In response, Applicants filed an Amendment under 37 C.F.R. § 1.111, which, *inter alia*, amended claim 25 to recite "a method of treating infections of the ears, nose or throat in a human or animal comprising administering to the ears, nose or throat, a pharmaceutical preparation of particulate carriers combined with an agent selected from the group consisting of an antiseptic agent, a wound-healing agent or a combination thereof." The subject matter of the amended claims is not independent or distinct from that as originally filed as they are directed to part (i) of originally filed and examined claim 25.

A second Office Action was mailed on November 26, 2002. Unintentionally, the application became abandoned and a petition to revive the application was filed. As a part of the petition to revive, Applicants filed a response to the office action mailed November 26, 2002, which canceled all of the pending claims and added new claims directed to, *inter alia*, a method for suppressing undesired tissue formation or for restoring the original appearance of tissue at a site of tissue damage in the upper respiratory tract or ear of a patient comprising, administering to a patient in need thereof at the site of tissue damage, an amount of liposomes sufficient to suppress undesired tissue formation or to restore the original appearance of the tissue, said liposomes containing povidone iodine." The subject matter of the newly added claims is not

independent or distinct from that as originally filed as they are directed to part (ii) of originally filed and examined claim 25.

Upon review of claim 25, as originally filed and subsequently amended during prosecution, claim 25 was originally directed to (i) treating infections of the human or animal upper respiratory tract or ear, or (ii) to functional and cosmetic tissue remodeling and repair, of the human or animal upper respiratory tract or ear. During prosecution, however, Applicants have amended claim 25 to be directed either to part (i), treating infections in the upper respiratory tract or ear, or have added new claims directed to part (ii), functional and cosmetic tissue remodeling and repair, *i.e.*, suppressing undesired tissue formation or for restoring the original appearance of tissue at a site of tissue damage in the upper respiratory tract or ear. Each time Applicants have amended the claims, the subject matter of the amended claims did not exceed the scope of the claims (including claim 25) as originally filed and examined.

Thus, in view of the foregoing, Applicants respectfully request that the Examiner reconsider his allegation that the claims filed on March 2, 2005 are directed to an invention that is distinct from the invention originally claimed, and respectfully request that the Response under 37 C.R.F. § 1.111 with Amendment mailed March 2, 2005 be entered and examined.

### **CONCLUSION**

Applicants respectfully request that the above-made remarks be entered and made of record in the file history present application.

Applicants request that the Examiner call the undersigned at (212) 326-3921 if any questions or issues remain.

Respectfully submitted,

Date:

February 27, 2006

Samuel B. Abrams  
Samuel B. Abrams

30,605  
(Reg. No.)

By:

William J. Thomann  
William J. Thomann

40,203  
(Reg. No.)

**JONES DAY**

222 East 41<sup>st</sup> Street

New York, New York 10017-6702

(212) 901-9028

Enclosure